

BOARD OF APPEALS  
for  
MONTGOMERY COUNTY

Stella B. Werner Council Office Building  
100 Maryland Avenue  
Rockville, Maryland 20850  
Hours of Operation: 8:30 a.m. – 4:00 p.m.  
Monday through Friday  
(240) 777-6600

**Case No. S-874**

**PETITION OF PETE J., NICHOLAS, JAMES AND ATHENA STRATES**

RESOLUTION TO REQUIRE COMPLIANCE

Resolution Adopted June 26, 2002)  
(Effective Date of Resolution: July 9, 2002)

**EVIDENCE PRESENTED TO THE BOARD**

1. Case No. S-874 is a special exception granted by the Board of Appeals July 27, 1983, to Charles E. Kerr and Charles Santos, to permit a horticultural nursery and commercial greenhouse. By Resolution dated August 20, 1999, the Board transferred the special exception to Pete J. Strates, Nicholas Strates, James Strates and Athena Strates.
2. The subject property contains 2.153 acres, located on the southeast corner of Ednor Road and Norwood Road, 1021 Norwood Road, Silver Spring, Maryland, in the RE-2C Zone.
3. On March 11, 2002, Stanley N. Garber, Zoning Investigator, Department of Permitting Services, issued a Notice of Violation for non-compliance of the use with several terms and conditions of the special exception opinion, including:
  - Several signs without issued sign permits or Board of Appeals approval;
  - Mulch storage area outside delineated areas;
  - Missing Large White Oak Trees;
  - Buildings erected on property without permits or Board approval;
  - Front end loader used on site without Board approval;
  - Concrete formed walls (blocks) stacked for storage areas;
  - Expanded parking area with gravel;
  - Small deck on property without permits.
4. On March 12, 2002, Mr. Garber issued a Notice of Violation which describes an additional violation: • Missing on-site septic and well facility to be approved by the county Health Department.
5. By Memorandum dated May 9, 2002 Mr. Garber advised the Board of continued violations of the terms and conditions of the special exception. Mr. Garber requested

that the Board convene a show cause hearing pursuant to Section 59-G-1.3(e) of the Zoning Ordinance. The Board considered Mr. Garber's memorandum at its Worksession on June 12, 2002.

6. On the basis of Mr. Garber's request, and in consideration of the potential public health issues raised by the absence of well and septic facilities, on June 26, 2002, pursuant to Section 59-G-1.3(e) (4) of the Zoning Ordinance, the Board convened a public hearing for the special exception holder to address the unresolved issues in the March, 2002 Notices of Violation and to show cause why the special exception should not be revoked.

7. Mr. Garber appeared at the hearing and stated that he had re-inspected the property on June 20, 2002. Mr. Garber said that he had continued concerns about certain signs on the property which do not have proper permits, and about the presence of a partially constructed building on the site. He stated that he had met with Mr. Strates, senior, about the need to correct remaining violations and comply with the Notice of violation, after which meeting he had been inclined to request that the Board continue the show cause hearing. He further stated that a site plan which depicts current conditions on the site is needed. He asked the Board to impose a definite compliance time upon the special exception holders.

8. Rolf Nieman appeared and testified on his own behalf and for the Cloverly Citizens' Association, regarding neighborhood concerns about unauthorized intensification of the use. He stated that a chain saw art business operates from the special exception site.

9. Nicholas James Strates, the special exception holder, appeared. Clarkson Sherwood, who leases the subject property and operates the special exception, also appeared. Mr. Strates provided the Board with a written chronology of his actions to address the issues in the Notice of Violation, including installation of a septic system. He stated that he was not aware, prior to receiving the Notice of Violation, of the necessity to obtain modifications to the special exception for changes in its appearance and operation, but that now is aware of that requirement and will adhere to it. Mr. Strates stated that he has hired an engineer and begun to prepare the documents needed to file an application for a modification of the special exception. Mr. Sherwood confirmed that the chain saw art business has operated from the special exception site. He also stated that he thought only the free-standing signs on the property were required to be removed.

## **FINDINGS OF THE BOARD**

1. Section 59-G-1.3(e)(6) of the Zoning Ordinance provides that at the conclusion of a show cause proceeding, "The Board, by the affirmative vote of at least 4 members, may reaffirm or revoke the special exception, or amend, add to, delete or modify the existing terms or conditions of the special exception."

2. The Board notes that Condition 4 of the Board of Appeals' July 27, 1983 Opinion granting the special exception states: "An on-site septic and well facility shall be approved by the County Health Department."

3. The Board appreciates Mr. Strates's prompt efforts to address the issues in the Notice of Violation. At the same time, the Board is concerned about the deviation of on site operations and activities from the approved special exception. Therefore, the Board imposes the following requirements:

Immediate cessation of the chain saw art business until such time as the Board approves a modification to the special exception to allow it;

Immediate removal of all remaining signs which lack necessary permits;

Installation, within 10 days, of plantings required on Exhibit No 24(b in the special exception record; and; and

all terms and conditions of the original special exception, together with any modifications granted by the Board of Appeals, remain in full force and effect.

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Donald H. Spence, Jr.  
Chairman, Montgomery County Board of Appeals

Entered in the Opinion Book  
of the Board of Appeals for  
Montgomery County, Maryland  
this 9<sup>th</sup> day of July, 2002.

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Katherine Freeman  
Executive Secretary to the Board

NOTE:

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book (See Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County, in accordance with the Maryland Rules of Procedure.